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SEP 12 2002

CASE:GLS:147408-02
CC:GLS:PCTL:Dingold

MEMORANDUM FOR SUSAN E. GILBERT
CHIEF, GRANT ADMINISTRATION
WAGE & INVESTMENT,
STAKEHOLDER PARTNERSHIPS, EDUCATION &
COMMUNICATION (W&I:SPEC)

FROM: Donald M. Suica *for*
Chief, Public Contracts and Technology Law Branch (GLS)
Internal Revenue Service

SUBJECT: Facilities and Administration (Indirect Costs), Allowable Expenses,
Matching Costs, and Low-Income Tax Clinics [SPEC]

This is in reply to your request for guidance on this subject.

"Facilities and Administration," or "F&A," is the term used in OMB Circulars A-122 and A-21, setting out accounting cost principles for non-profit organizations and educational institutions. The term covers costs that are incurred for common or joint objectives within an organization or institution and that cannot be readily identified with a particular final cost objective. Such costs are "allowable expenses" in federal grants in general, meaning that federal grantees – including recipients of Low-Income Tax Clinic (LITC) grants – can include them in their reports of expenditures. Such costs cannot, however, be counted for purposes of the matching funds requirement. The prohibition on their being used for purposes of the matching funds requirement is a result of the following provisions of I.R.C. § 7526:

A low-income taxpayer clinic must provide matching funds on a dollar-for-dollar basis for all grants provided under this section. Matching funds may include –

(A) the salary (including fringe benefits) of individuals performing services for the clinic; and

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(B) the cost of equipment used in the clinic.

Indirect expenses, including general overhead of the institution sponsoring the clinic, shall not be counted as matching funds.

IRC § 7526(c)(5).

Thus, while it is appropriate for a clinic to spend LITC grant funds to cover F&A costs that a non-profit organization or an educational institution may assess, the expense may not be waived or deferred and listed as a matching funds equivalent.

We understand this is a recurring issue. We attach copies of a PowerPoint presentation that we prepared on this topic for the American University/American Bar Association LITC Workshop in May, 2001. It includes more background on the OMB Circulars and a more detailed explanation of the distinction between "allowable expenses" and "matching funds."

If you or others have any questions in general about this opinion, you should contact Dave Ingold on my staff, in the Public Contracts and Technology Law Branch of General Legal Services, by telephoning 202 283-7952.

cc: Nachman CC:P&A(APJP)
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Indirect Costs (*Low-Income Taxpayer Clinics*)

A Presentation

by Dave Ingold, of Public Contracts & Technology Law,
General Legal Services

Office of Chief Counsel, IRS,

for the American University/American Bar
Association LITC Workshop on May 9, 2001

Introduction

- Overview of Indirect Costs provisions in
 - ◆ the authorizing statute (IRC 7526);
 - ◆ Pub. 3319 (the LITC Grant Application Package & Guidelines) &
 - ◆ relevant OMB Circulars:
 - ✦ A-122, "Cost Principles for Non-Profit Organizations Institutions;" &
 - ✦ A-21, "Cost Principles for Educational Institutions."

*by an attorney, **not** an accountant.*

Tax Code Section 7526

■ (c) *Special Rules and Limitations*

◆ (5) *Requirement of Matching Funds. --*

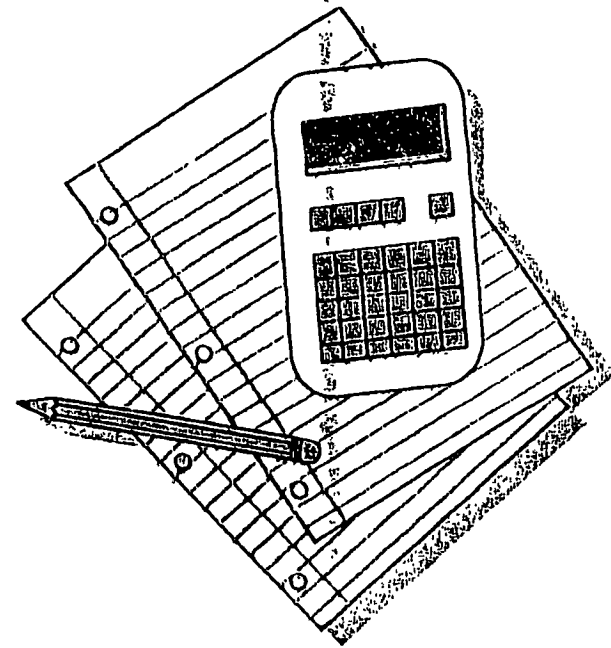
✦ A low-income tax-payer clinic must provide matching funds on a dollar-for-dollar basis for all grants under this section. Matching funds may include--

- (A) the salary (including fringe benefits) of individuals performing services for the clinic; and
- (B) the cost of equipment used in the clinic.

Indirect expenses, including general overhead of the institution sponsoring the clinic, shall not be counted as matching funds.

What costs can be counted as matching funds?

- **Definitely** salary * (including fringe benefits) of individuals performing services for the clinics; &
- **Definitely** the cost of-equipment used in the clinic.



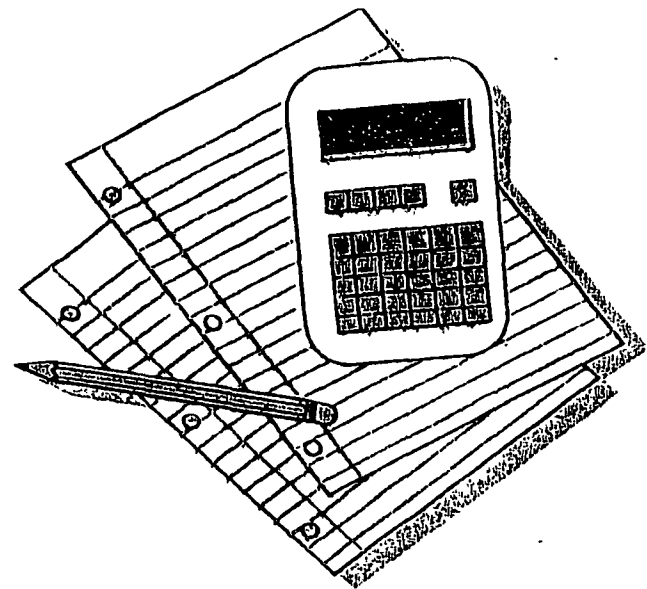
* Including volunteer services, if “an integral & necessary part of an approved project or program,”
@ rates consistent with OMB Circular A-110,

But services provided by students to satisfy an academic credit do not qualify as matching funds.

What costs may not be counted as matching funds?

Indirect Costs

- including the:
 - ◆ *“General overhead of the institution sponsoring the clinic.”*

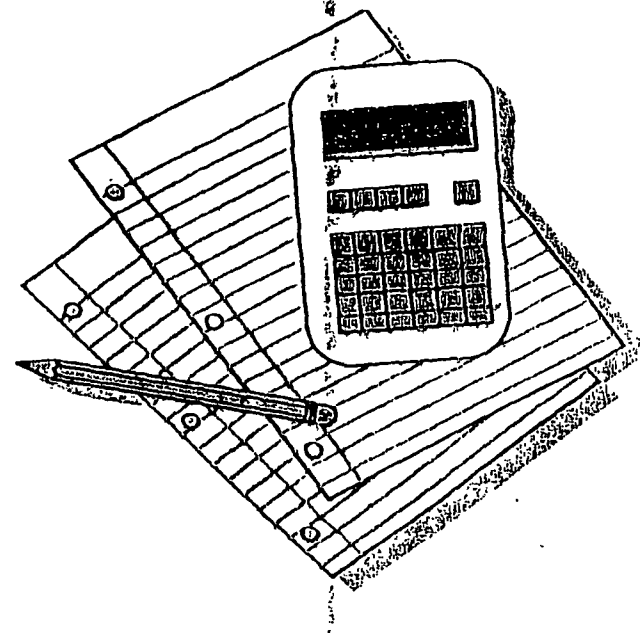


More about this, but let's also consider...

Indirect Costs are “Allowable Expenses” under Pub. 3319.

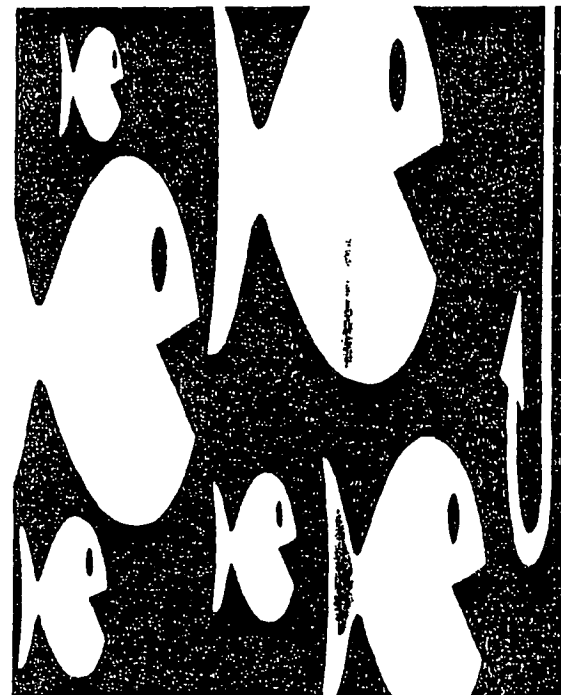
- Allowable Expenses include but are not limited to:

“indirect costs as determined by OMB Circulars A-122 and A-21.”

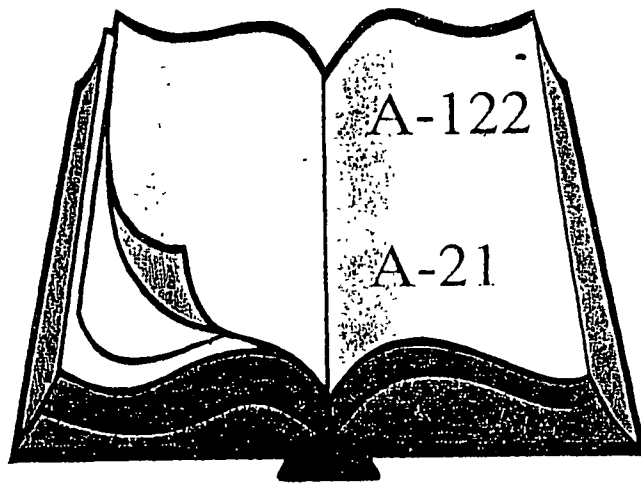


There is more than one fish in the sea:

- Do not confuse the statutory limitation of not counting indirect expenses for purposes of matching funds
- With what may, or may not, be “allowable” as expenses as set out in Publication 3319.

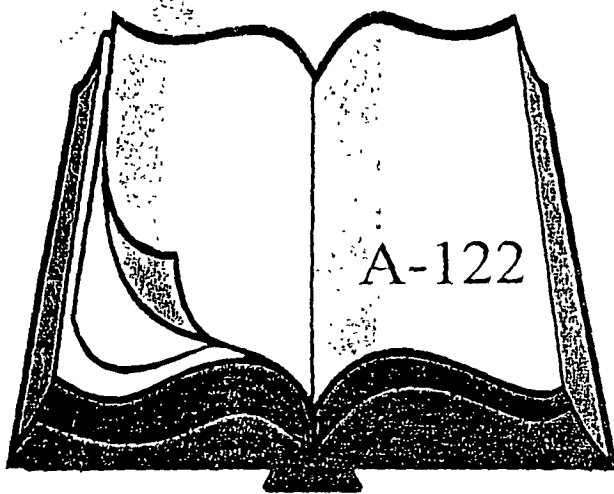


Look to the OMB Circulars for general definitions & principles



- A-122, "Cost Principles for Non-Profit Organizations Institutions;" and
- A-21, "Cost Principles for Educational Institutions."

OMB Circular A-122, "Cost Principles for Non-Profit Organizations Institutions,"

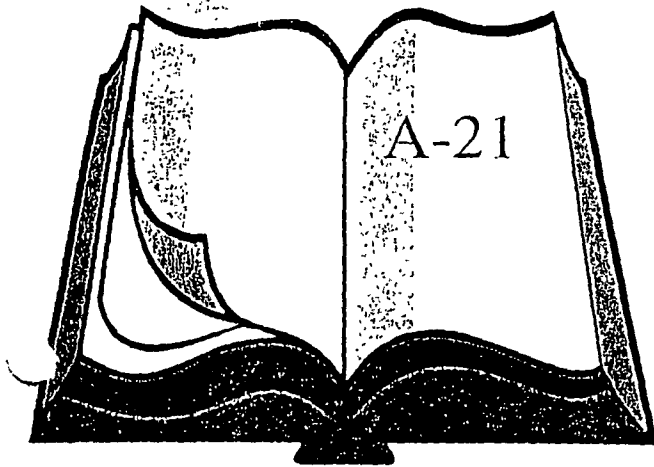


■ "Direct costs" are those that can be identified specifically with a particular final cost objective. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost.

■ "Indirect costs" are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. The two broad categories are:

- ◆ Facilities; and
- ◆ Administration.

OMB Circular A-21, "Cost Principles for Educational Institutions,"



- Uses the term "Facilities and Administration" or "F&A" as the equivalent of indirect costs
- "Direct costs" are those that can be identified specifically with a particular activity with a high degree of accuracy;
- Identification with sponsored work rather than the nature of the goods & services is the determining factor in distinguishing direct from F&A costs.

Summary:

- LITC authorizing statute, Tax Code § 7625, provides:
 - ◆ Matching Funds may include
 - ✦ Salary; and
 - ✦ Cost of equipment used in clinic.
 - ◆ Indirect Expenses, including general overhead of the institution, shall not be counted as matching funds.

Summary (continued):

- The OMB Circulars provide general definitions and principles as aids to distinguishing direct & indirect costs.



The “key” is identification with the sponsored work rather than the nature of the goods or services, although

The 2 broad categories are Facilities and Administration.